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**SUBSTITUTE SENATE BILL 6106**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Spanel, Kohl-Welles, Clements and Keiser)

READ FIRST TIME 02/28/07.

1       AN ACT Relating to the regulation of certain trades by the  
2 department of labor and industries; amending RCW 18.118.020; and adding  
3 a new chapter to Title 18 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to  
6 establish guidelines for the regulation of construction trades or  
7 construction-related trades generally overseen in some capacity by the  
8 department of labor and industries. This chapter applies when a trade  
9 seeks legislation to increase its scope of practice or the level of  
10 regulation of the trade, or when a trade seeks regulation of  
11 construction trades or construction-related trades not licensed or  
12 regulated on July 1, 2007. This chapter also applies when a legislator  
13 or a legislative committee requests that the department determine  
14 whether a trade should be regulated by the state. This chapter is not  
15 intended and shall not be construed to: (a) Apply to any regulatory  
16 entity created prior to July 1, 2007, except as provided in this  
17 chapter; (b) affect the powers and responsibilities of the  
18 superintendent of public instruction or Washington professional  
19 educator standards board under RCW 28A.410.210 and 28A.410.010; (c)

1 apply to or interfere in any way with the practice of religion or to  
2 any kind of treatment by prayer; (d) apply to any remedial or technical  
3 amendments to any statutes that licensed or regulated activity before  
4 July 1, 2007; and (e) apply to proposals relating solely to continuing  
5 education. The legislature declares that all individuals should be  
6 permitted to enter into a profession unless there is an overwhelming  
7 need for the state to protect the interests of the public by  
8 restricting entry into the profession. When such a need is identified,  
9 the regulation adopted by the state should be set at the least  
10 restrictive level consistent with the public interest to be protected.

11 (2) It is the intent of this chapter that no regulation shall be  
12 imposed upon any profession except for the purpose of protecting the  
13 public interest and the interest of the worker. Generally, a trade  
14 should be regulated by the state only when:

15 (a) Unregulated practice can clearly harm or endanger the health,  
16 safety, or welfare of the public, or the worker, and the potential for  
17 the harm is easily recognizable and not remote or dependent upon  
18 tenuous argument;

19 (b) The public or the worker needs and can reasonably be expected  
20 to benefit from an assurance of initial and continuing professional  
21 ability; and

22 (c) The public or the worker cannot be effectively protected by  
23 other means in a more cost-beneficial manner.

24 (3) After evaluating the criteria in subsection (2) of this section  
25 and considering governmental, societal, and worker costs and benefits,  
26 if the department determines that it is necessary to regulate a trade  
27 not previously regulated by law, the least restrictive alternative  
28 method of regulation should be recommended, consistent with the public  
29 interest and this section:

30 (a) When existing common law and statutory civil actions and  
31 criminal prohibitions are not sufficient to eradicate existing harm,  
32 the regulation should provide for stricter civil actions and criminal  
33 prosecutions;

34 (b) When a service is being performed for individuals involving a  
35 hazard to the public or the worker's health, safety, or welfare, the  
36 regulation should impose inspection requirements and enable the  
37 department to enforce violations by injunctive relief in court,

1 including, but not limited to, regulation of the trade activity  
2 providing the service rather than the employees of the business;

3 (c) When the threat to the public or worker health, safety, or  
4 economic well-being is relatively small as a result of the operation of  
5 the trade, the regulation should implement a system of registration;

6 (d) When the consumer may have a substantial basis for relying on  
7 the services of a practitioner, the regulation should implement a  
8 system of certification; or

9 (e) When apparent that adequate regulation cannot be achieved by  
10 means other than licensing, the regulation should implement a system of  
11 licensing.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply  
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Applicant group" includes any trade professional group or  
15 organization, any individual, or any other interested party that  
16 proposes that any trade group not presently regulated be regulated or  
17 that proposes legislation to substantially increase the scope of  
18 practice or the level of regulation of the profession.

19 (2) "Certification" means a voluntary process by which a statutory  
20 regulatory entity grants recognition to an individual who (a) has met  
21 certain prerequisite qualifications specified by that regulatory  
22 entity, and (b) may assume or use "certified" in the title or  
23 designation to perform prescribed professional tasks.

24 (3) "Department" means the department of labor and industries.

25 (4) "Grandfather clause" means a provision in a regulatory statute  
26 applicable to practitioners actively engaged in the regulated  
27 profession prior to the effective date of the regulatory statute that  
28 exempts the practitioners from meeting the prerequisite qualifications  
29 set forth in the regulatory statute to perform prescribed occupational  
30 tasks.

31 (5) "Inspection" means the periodic examination of practitioners by  
32 a state agency in order to ascertain whether the practitioners'  
33 occupation is being carried out in a fashion consistent with the public  
34 health, safety, and welfare.

35 (6) "Legislative committees of reference" means the standing  
36 legislative committees designated by the respective rules committees of

1 the senate and house of representatives to consider proposed  
2 legislation to regulate trades not previously regulated.

3 (7) "License," "licensing," and "licensure" mean permission to  
4 engage in a trade which would otherwise be unlawful in the state in the  
5 absence of the permission. A license is granted to those individuals  
6 who meet prerequisite qualifications to perform prescribed professional  
7 tasks and for the use of a particular title.

8 (8) "Practitioner" means an individual who (a) has achieved  
9 knowledge and skill by practice, and (b) is actively engaged in a  
10 specified trade.

11 (9) "Public member" means an individual who is not, and never was,  
12 a member of the trade being regulated or the spouse of a member, or an  
13 individual who does not have and never has had a material financial  
14 interest in either the rendering of the trade service being regulated  
15 or an activity directly related to the profession being regulated.

16 (10) "Registration" means the formal notification which, prior to  
17 rendering services, a practitioner shall submit to a state agency  
18 setting forth the name and address of the practitioner; the location,  
19 nature, and operation of the trade activity to be practiced; and, if  
20 required by the regulatory entity, a description of the service to be  
21 provided.

22 (11) "Regulatory entity" means any board, commission, agency,  
23 division, or other unit or subunit of state government which regulates  
24 one or more professions, occupations, industries, trades, businesses,  
25 or other endeavors in this state.

26 (12) "State agency" includes every state office, department, board,  
27 commission, regulatory entity, and agency of the state, and, where  
28 provided by law, programs and activities involving less than the full  
29 responsibility of a state agency.

30 (13) "Trade" means activities related to construction, electrical,  
31 plumbing, asbestos removal, boiler, elevator, and factory-built  
32 structures work. It also includes any work related to one of these  
33 trades.

34 NEW SECTION. **Sec. 3.** After July 1, 2007, the department shall  
35 determine, by interviewing members of applicant trade groups,  
36 discussions with the general public, information received in public  
37 hearings as provided in section 4 of this act, and the department's own

1 internal information, if a trade should be regulated or further  
2 regulated. The department shall make this determination by reviewing  
3 at least the following factors:

4 (1) A definition of the problem and why regulation is necessary:

5 (a) The nature of the potential harm to the public if the trade is  
6 not regulated, and the extent to which there is a threat to public  
7 health and safety;

8 (b) The extent to which consumers need and will benefit from a  
9 method of regulation identifying competent practitioners, indicating  
10 typical employers, if any, of practitioners in the trade; and

11 (c) The extent of autonomy a practitioner has, as indicated by:

12 (i) The extent to which the profession calls for independent  
13 judgment and the extent of skill or experience required in making the  
14 independent judgment; and

15 (ii) The extent to which practitioners are supervised;

16 (2) The efforts made to address the problem:

17 (a) Voluntary efforts, if any, by members of the trade to:

18 (i) Establish a code of ethics or standards of practice; or

19 (ii) Help resolve disputes between practitioners and consumers; and

20 (b) Recourse to and the extent of use of applicable law and whether  
21 it could be strengthened to control the problem;

22 (3) The alternatives considered:

23 (a) Regulation of trade employers or practitioners rather than  
24 employee practitioners;

25 (b) Regulation of the program or service rather than the individual  
26 practitioners;

27 (c) Registration of all practitioners;

28 (d) Certification of all practitioners;

29 (e) Other alternatives;

30 (f) Why the use of the alternatives specified in this subsection  
31 are not adequate to protect the public interest; and

32 (g) Why licensing would serve to protect the public interest;

33 (4) The benefit to the public and the worker if regulation is  
34 granted:

35 (a) The extent to which the incidence of specific problems present  
36 in the unregulated trade can reasonably be expected to be reduced by  
37 regulation;

38 (b) Whether the public can identify qualified practitioners;

1 (c) The extent to which the public can be confident that qualified  
2 practitioners are competent:

3 (i) Whether the proposed regulatory entity would be a board  
4 composed of members of the profession and public members, or a state  
5 agency, or both, and, if appropriate, their respective responsibilities  
6 in administering the system of registration, certification, or  
7 licensure, including the composition of the board and the number of  
8 public members, if any; the powers and duties of the board or state  
9 agency regarding examinations and for cause revocation, suspension, and  
10 nonrenewal of registrations, certificates, or licenses; the adoption of  
11 rules and canons of ethics; the conduct of inspections; the receipt of  
12 complaints and disciplinary action taken against practitioners; and how  
13 fees would be levied and collected to cover the expenses of  
14 administering and operating the regulatory system;

15 (ii) If there is a grandfather clause, whether such practitioners  
16 will be required to meet the prerequisite qualifications established by  
17 the regulatory entity at a later date;

18 (iii) The nature of the standards proposed for registration,  
19 certification, or licensure as compared with the standards of other  
20 jurisdictions;

21 (iv) Whether the regulatory entity would be authorized to enter  
22 into reciprocity agreements with other jurisdictions; and

23 (v) The nature and duration of any training including, but not  
24 limited to, whether the training includes a substantial amount of  
25 supervised field experience; whether training programs exist in this  
26 state; if there will be an experience requirement; whether the  
27 experience must be acquired under a registered, certificated, or  
28 licensed practitioner; whether there are alternative routes of entry or  
29 methods of meeting the prerequisite qualifications; whether all  
30 applicants will be required to pass an examination; and, if an  
31 examination is required, by whom it will be developed and how the costs  
32 of development will be met;

33 (d) Assurance of the public that practitioners have maintained  
34 their competence:

35 (i) Whether the registration, certification, or licensure will  
36 carry an expiration date; and

37 (ii) Whether renewal will be based only upon payment of a fee, or

1 whether renewal will involve reexamination, peer review, continuing  
2 education, or other enforcement;

3 (5) The extent to which regulation might harm the public:

4 (a) The extent to which regulation will restrict entry into the  
5 profession:

6 (i) Whether the proposed standards are more restrictive than  
7 necessary to ensure safe and effective performance; and

8 (ii) Whether the proposed legislation requires registered,  
9 certificated, or licensed practitioners in other jurisdictions who  
10 migrate to this state to qualify in the same manner as state applicants  
11 for registration, certification, and licensure when the other  
12 jurisdiction has substantially equivalent requirements for  
13 registration, certification, or licensure as those in this state; and

14 (b) Whether there are similar trades to that of the applicant group  
15 which should be included in, or portions of the applicant group which  
16 should be excluded from, the proposed legislation;

17 (6) The maintenance of standards:

18 (a) Whether effective quality assurance standards exist in the  
19 profession, such as legal requirements associated with specific  
20 programs that define or enforce standards, or a code of ethics; and

21 (b) How the proposed legislation will assure quality:

22 (i) The extent to which a code of ethics or standards of practice,  
23 if any, will be adopted; and

24 (ii) The grounds for suspension or revocation of registration,  
25 certification, or licensure;

26 (7) A description of the group proposed for regulation, including  
27 a list of associations, organizations, and other groups representing  
28 the practitioners in this state, an estimate of the number of  
29 practitioners in each group, and whether the groups represent different  
30 levels of practice; and

31 (8) The expected costs of regulation:

32 (a) The impact registration, certification, or licensure will have  
33 on the costs of the services to the public; and

34 (b) The cost to the state and to the general public of implementing  
35 the proposed legislation.

36 NEW SECTION. **Sec. 4.** (1) The department shall hold a public  
37 hearing during which the department will receive public comment on

1 whether a trade should be regulated by the state. At least twenty days  
2 before the public hearing, the department shall post on its web site a  
3 notice of hearing. The notice must include:

4 (a) The trades for which information is sought;

5 (b) The information requested under section 3 of this act; and

6 (c) When, where, and how members of the general public may present  
7 information about the trade.

8 (2) The department shall request names of individuals and  
9 organizations that may have information needed for the review from  
10 legislators and other identified interested parties. The department  
11 must send these individuals and organizations the notice under this  
12 section.

13 NEW SECTION. **Sec. 5.** After the department has conducted its  
14 review under this chapter, it shall submit a report with the details of  
15 its review as well as its recommendations about regulating the trade to  
16 the legislative committees of reference. It shall also post the report  
17 on its web site.

18 **Sec. 6.** RCW 18.118.020 and 1987 c 514 s 5 are each amended to read  
19 as follows:

20 The definitions contained in this section shall apply throughout  
21 this chapter unless the context clearly requires otherwise.

22 (1) "Applicant group" includes any business professional group or  
23 organization, any individual, or any other interested party which  
24 proposes that any business professional group not presently regulated  
25 be regulated or which proposes legislation to substantially increase  
26 the scope of practice or the level of regulation of the profession.

27 (2) "Business professions" means those business occupations or  
28 professions which are not health professions under chapter 18.120 RCW  
29 and includes, in addition to real estate brokers and salespersons under  
30 chapter 18.85 RCW, the following professions and occupations:  
31 Accountancy under chapter 18.04 RCW; architects under chapter 18.08  
32 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers,  
33 and manicurists under chapter 18.16 RCW; (~~contractors under chapter~~  
34 ~~18.27 RCW;~~) debt adjusting under chapter 18.28 RCW; engineers and  
35 surveyors under chapter 18.43 RCW; escrow agents under chapter 18.44

1 RCW; landscape architects under chapter 18.96 RCW; (~~water well~~  
2 ~~construction under chapter 18.104 RCW; plumbers under chapter 18.106~~  
3 ~~RCW~~)) and art dealers under chapter 18.110 RCW.

4 (3) "Certificate" and "certification" mean a voluntary process by  
5 which a statutory regulatory entity grants recognition to an individual  
6 who (a) has met certain prerequisite qualifications specified by that  
7 regulatory entity, and (b) may assume or use "certified" in the title  
8 or designation to perform prescribed professional tasks.

9 (4) "Grandfather clause" means a provision in a regulatory statute  
10 applicable to practitioners actively engaged in the regulated  
11 profession prior to the effective date of the regulatory statute which  
12 exempts the practitioners from meeting the prerequisite qualifications  
13 set forth in the regulatory statute to perform prescribed occupational  
14 tasks.

15 (5) "Inspection" means the periodic examination of practitioners by  
16 a state agency in order to ascertain whether the practitioners'  
17 occupation is being carried out in a fashion consistent with the public  
18 health, safety, and welfare.

19 (6) "Legislative committees of reference" means the standing  
20 legislative committees designated by the respective rules committees of  
21 the senate and house of representatives to consider proposed  
22 legislation to regulate business professions not previously regulated.

23 (7) "License", "licensing", and "licensure" mean permission to  
24 engage in a business profession which would otherwise be unlawful in  
25 the state in the absence of the permission. A license is granted to  
26 those individuals who meet prerequisite qualifications to perform  
27 prescribed professional tasks and for the use of a particular title.

28 (8) "Professional license" means an individual, nontransferable  
29 authorization to carry on an activity based on qualifications which  
30 include: (a) Graduation from an accredited or approved program, and  
31 (b) acceptable performance on a qualifying examination or series of  
32 examinations.

33 (9) "Practitioner" means an individual who (a) has achieved  
34 knowledge and skill by practice, and (b) is actively engaged in a  
35 specified business profession.

36 (10) "Public member" means an individual who is not, and never was,  
37 a member of the business profession being regulated or the spouse of a  
38 member, or an individual who does not have and never has had a material

1 financial interest in either the rendering of the business professional  
2 service being regulated or an activity directly related to the  
3 profession being regulated.

4 (11) "Registration" means the formal notification which, prior to  
5 rendering services, a practitioner shall submit to a state agency  
6 setting forth the name and address of the practitioner; the location,  
7 nature and operation of the business activity to be practiced; and, if  
8 required by the regulatory entity, a description of the service to be  
9 provided.

10 (12) "Regulatory entity" means any board, commission, agency,  
11 division, or other unit or subunit of state government which regulates  
12 one or more professions, occupations, industries, businesses, or other  
13 endeavors in this state.

14 (13) "State agency" includes every state office, department, board,  
15 commission, regulatory entity, and agency of the state, and, where  
16 provided by law, programs and activities involving less than the full  
17 responsibility of a state agency.

18 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute  
19 a new chapter in Title 18 RCW.

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